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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,651	08/27/1999	MICHAEL GREMINGER	31949	9479
116	7590	03/24/2004		
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
			EXAMINER FAULK, DEVONA E	
			ART UNIT 2644	PAPER NUMBER

DATE MAILED: 03/24/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/385,651

Applicant(s)

GREMINGER, MICHAEL

Examiner

Devona E. Faulk

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 10 is/are rejected.
- 7) ☒ Claim(s) 4-9 is/are objected to.
- 8) ☒ Claim(s) 11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. During a telephone conversation with Michael Garvey (Reg. No. 35,878) on 3/8/04 a provisional election was made without traverse to prosecute the invention of a hearing aid tuning device, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claim 11 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Drawings

3. The drawings are objected to because Figures 2, 5, and 7 have elements identified in a language that is not English. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 4-9 are objected to under 37 CFR 1.75(c) as being in improper form because of multiple dependent claims "claims 1 to 3" as recited in claim 4, "claims 1 to 4" as recited in claim 5, "claims 1 to 5" as recited in claim 6, and "claims 1 to 8" as recited by claim 9. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-3, and 10** are rejected under 35 U.S.C. 102(b) as being anticipated by Moser et al. (WO 85/00509).

7. Regarding **claim 1**, Moser discloses an audiometer system for selectively generating audio-logic test signals comprising a compact disc player (52) for selectively reproducing audio-logic test signals stored on the compact disc player (54) (page 14, line 21-25) which reads on “an audio medium play-back unit is provided”; a microprocessor (60), which reads on “computing unit”, that controls the compact disc player (52) (page 14, line 33-page 15, line 2) which reads on “whose control input is connected on the output side with the computing unit”. Moser further teaches that the output signal of the compact disc player (52) is fed to an amplifier and attenuator unit, which is then applied to a loudspeaker (58) (page 14, lines 26-32) which reads on “whose audio output is connected with a connection for a loudspeaker:.”

8. **Claim 2** claims the tuning device of claim 1, hereby characterized by the fact that the play-back unit contains at least one audio storage chip and is preferably a CD play-back unit, in particular preferred as an audio CD play-back unit. Moser teaches of the play-back unit as a compact disc player (52). He further teaches that the information stored on the compact disc (54) is listed in a stored table of contents (page 18, lines 30-33). There is therefore inherently some sort of audio storage chip as claimed.

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9. **Claim 3** claims the tuning device of claim 1 or 2, hereby characterized by the fact the play-back unit is provided that tests an audio storage medium on the play-back unit for a predetermined indicator and with non-recognition blocks the play-back unit and preferably emits an indication to a display unit. Moser further teaches of a form identifier (74) that is adapted to recognize form sheets that indicate a schedule of available test signals (page 15, lines 25-27), what kind of form is present and may comprise optical or other sensor elements. The form identifier is connected to the microprocessor (60) to provide a respective form identification signal (page 16, lines 23-31).

10. Regarding **claim 10**, Moser discloses an audiometer system for selectively generating audio-logic test signals comprising a display screen unit (70) that enables an operator to select desired test signals and from that operator's selection, the desired test signals are reproduced which reads on "according to the data entry an audio test signal is automatically selected and played back"(See abstract).

Conclusion

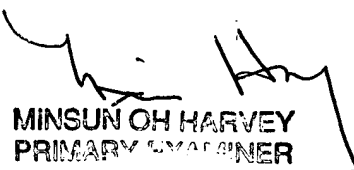
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 703-305-4359. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MINSUN OH HARVEY
PRIMARY EXAMINER